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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the combined fourth and fifth periodic reports of Namibia

Addendum

Information provided by Namibia in follow-up to the concluding observations*

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Note: The present document is being circulated in English, French and Spanish only.

* The present document is being issued without formal editing.

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Adoption of a comprehensive legal definition of discrimination in line with article 1 of the Convention

(a) To adopt a comprehensive legal definition of discrimination in line with article 1 of the Convention, covering all prohibited grounds of discrimination, including marital and other status, either by amending article 10 of the Constitution or by adopting other appropriate legislation.

1. Article 10 of the Namibian Constitution states that:

(1) All persons shall be equal before the law;

(2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

2. Although the above provision does not expressly state the prohibition of discrimination on account of marital and other status, we wish to inform the Committee that under Namibian law, the Constitution can be broadly interpreted to include the prohibition of the said forms of discrimination. The Superior Courts of the land have already ruled against the narrow interpretation of the Constitution as this infringes the fundamental rights and freedoms of individuals.

3. Moreover, there exist pieces of legislation that proscribe all forms of discrimination against women. These pieces of legislation are briefly described below:

Married Persons Equality Act of 1996

4. This progressive piece of legislation abolished the concept of "marital power" which made a husband the head of the household. Under this law, both husband and wife are equal in marriage.

Communal Land Reform Act

5. The Communal Land Reform Act is another progressive law that protects a widow against land dispossession in the event that her husband dies before her.

Divorce Bill

6. Once enacted, the Divorce Act will provide for the grounds of divorce for marriages concluded in terms of the existing laws on marriage, namely the Marriage Act, 1961, (Act No. 25 of 1961), and Marriages recognised by the Recognition of Certain Marriages Act, 1991 (Act No.18 of 1991) and to provide for the recognition of foreign divorce orders; and to provide for incidental matters. The envisaged Divorce Act will make it easier for couples to divorce on grounds of irretrievable breakdown of marriage. Currently married couples can only divorce each other on grounds which are difficult to prove.

(b) To urgently adopt pending bills, such as those on marriage, recognition of customary marriages, procurement, marital property, divorce and intestate succession

7. The promulgation of the above bills is in the final stages and it is hoped that by the second quarter of the year 2018 many of them will become law.

Adequate funding for the legal aid fund for women

The Committee recommends that the State party ensure that adequate funding is provided to the legal aid fund and that women, in particular women pursuing

divorce and gender-based violence cases, have effective access to justice in all parts of the State party.

8. The Namibian Legal Aid Fund is available to all indigent persons irrespective of gender provided they meet the qualifying requirements. The State party uses the "means test" in assessing all applications for legal aid. An individual without an income or earns below a monthly salary of less than 3,000 Namibian dollars can qualify for legal aid.

9. Victims of gender-based violence are afforded free medical services by the State. This includes free counselling services, medical services, accommodation and protection from further abuse by their intimate partners.

10. To reduce the costs of litigation that involves divorce, the High Court of Namibia introduced mediation services as a relatively inexpensive mechanism and this has proven to be an effective method of resolving familial disputes between divorcing spouses.

11. To further reduce the costs and time involved in divorce proceedings, the State party is in the process of enacting a divorce law that will make it easier for couples to divorce on grounds of irretrievable breakdown of marriage. As mentioned above, currently married couples can only divorce each other on grounds which are difficult to prove. Moreover under the envisaged Divorce Act, regional magistrates courts will be afforded jurisdiction to grant divorce orders. Currently only the High Court has jurisdiction to grant divorce orders.

12. Below are some of the proposed bills that are aimed at combating some forms of gender-based violence:

Whistle-blowers Bill

13. This law once enacted will protect whistle-blowers who report cases of gender-based violence not only that which involves intimate partners but also perpetrators of other forms of gender-based violence such as human trafficking.

Witness Protection Bill

14. Like the Whistle-blowers bill above, this law is aimed at protecting individuals who report cases of other forms of gender-based violence such as human trafficking vis a vis sex trafficking and abuse of victims of gender-based violence by organs of the State such as the police.

Torture Bill

15. Once enacted, the bill will combat all forms of torture including gender-based violence.

Combating of Trafficking in Persons Bill

16. When this bill enacted, it will criminalize trafficking in persons and related offences.